

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WISCONSIN

TERRY P. BRUCE,

Plaintiff,

Case No. 05-C-889

v.

HAUSMANN-MCNALLY, S.C.,
CHARLES J. HAUSMANN and
JOHN F. McNALLY as Trustees and
Plan Administrators of The
HAUSMANN-MCNALLY, S.C.
EMPLOYEES' PROFIT SHARING PLAN
AND TRUST,

Defendants.

OPINION AND ORDER

Plaintiff Terry Bruce is suing his ERISA Plan and the Plan fiduciaries for money damages for breach of fiduciary duties. He is seeking relief under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001, et seq. On December 13, 2005, this court issued an Opinion and Order requiring the parties to brief the issue of whether this case should be dismissed because this court is not able to grant the relief the Plaintiff seeks. The parties have now briefed this issue.

The Plaintiff is seeking relief under 29 U.S.C. § 1132(a)(3). This ERISA subsection authorizes plaintiffs to seek injunctions or "other appropriate equitable relief." This limitation on available relief was recognized by the United States Supreme Court in Great-West Life & Annuity Insurance Company v. Knudson, 534 U.S. 204

(2002), and more recently in Sereboff v. Mid Atlantic Medical Services, Inc., 2006 WL 1310754 (U.S. May 15, 2006) No. 5-260.

In this case, the Plaintiff, an ERISA Plan beneficiary, is seeking compensation for the losses he alleges to have incurred because of the alleged fiduciary breaches of the Defendants. This is legal, not equitable, relief. Under the controlling Supreme Court law, this court can only award equitable relief under ERISA. Therefore, the court ORDERS that the Amended Complaint and this action are dismissed for failure to state a claim upon which relief can be granted. See Federal Rule of Civil Procedure 12(b)(6).

IT IS FURTHER ORDERED that the Clerk of Court shall enter a final judgment of dismissal as a separate document. See Federal Rule of Civil Procedure 58. This judgment shall provide that:

Plaintiff Terry P. Bruce brought this action against Defendants Hausmann-McNally, S.C., Charles J. Hausmann and John F. McNally as Trustees and Plan Administrators of The Hausmann-McNally, S.C. Employees' Profit Sharing Plan and Trust, before the court, the Honorable Thomas J. Curran, District Judge, presiding, and the Amended Complaint having been dismissed,

IT IS ORDERED AND ADJUDGED

that this action is dismissed with prejudice.

Done and Ordered in Chambers at the United States Courthouse, Milwaukee, Wisconsin, this 17th day of May, 2006.

s/ Thomas J. Curran
Thomas J. Curran
United States District Judge